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In the Supreme Court of the United States

OCTOBER TERM, 1954

No.—

UNITED STATES OF AMERICA, PETITIONER

v.

JACKIE LEE HINKLE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Solicitor General, on behalf of the United States, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit reversing the conviction of respondent for refusal to submit to induction into the armed forces.

OPINION BELOW

The opinion of the Court of Appeals (Appendix, *infra*, pp. 1a-4a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals was entered September 24, 1954 (Appendix, *infra*, p. 5a).

On October 21, 1954, Mr. Justice Douglas extended the time for filing a petition for a writ of certiorari to November 23, 1954 (Appendix, *infra*, p. 6a). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was a basis in fact for denial to respondent, a member of Jehovah's Witnesses, of a draft classification as a conscientious objector where he indicated that he was not opposed to wars he deemed authorized by God but that he would not submit to any secular governmental authority.

STATUTE INVOLVED

Section 6(j) of the Universal Military Training and Service Act, 62 Stat. 604, 612; 65 Stat. 75, 86 (50 U.S.C. App. 456(j)), provides in pertinent part:

> Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming ex-

emption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the

> appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give consideration to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

STATEMENT

The United States seeks review of the judgment of the Court of Appeals for the Ninth Circuit reversing respondent's conviction for refusal to submit to induction into the armed forces, the court holding that the record revealed no basis in fact for denial of respondent's claim to be a conscientious objector. Respondent had been found guilty in the District Court for the Northern District

of California by the court without a jury and sentenced to imprisonment for eighteen months (R. 6-9, 42-46).

Respondent's selective service file, which was admitted in evidence as government's Exhibit 1 (R. 14), a copy of which has been lodged with the Clerk of this Court, reveals the following:

He was born on January 3, 1933. In the selective service questionnaire which he filed on November 6, 1951, he claimed to be a student preparing for the ministry under the direction of the Watchtower Bible and Tract Society (pp. 4, 6).[1] He stated that he was a conscientious objector (p. 12). To the special form for conscientious objectors, filed on November 8, 1951, he attached a long statement which contained, *inter alia,* the following (p. 18):

> A christian minister can be a conscientious objector to war and yet not be a pacifist. Christians are soldiers of Christ and engaged in the righteous warfare of God. A true christian is not a pacifist because a pacifist refuses to fight or kill under any circumstances. A christian will fight and even kill under some circumstances, which are limited. JEHOVAH'S Witnesses will fight when GOD authorizes them to do so.

He also said that Jehovah's Witnesses are not a political group and do not take part in the affairs of the world; that they are neutral (pp. 20-21).

He was given a I-A classification in November

[1] The references designated as "p." are to Exhibit 1.

1951 (p. 13), and appealed therefrom. His case was then referred to the Department of Justice. The Department's letter to the appeal board, dated March 11, 1953 (pp. 43-44), summarized the registrant's beliefs as follows:

> As a minister of Jehovah he must be "neutral" in wars among nations. But as a Christian he must be willing to carry on righteous warfare as a soldier of Christ. Jehovah's Witnesses, not being pacifists, will fight and kill when God authorizes it. Registrant justifies the battles of the Old Testament as ordained by Jehovah to establish theocratic rule. Registrant also believes he may kill in self defense and protecting his home.

The letter also reports that the hearing officer had found the registrant sincere but that "his willingness to kill a soldier in self defense removed him from the category of a true conscientious objector."

The Department's letter goes on to state:

> Although a belief that killing is justified in self defense does not refute a claim of conscientious objection, registrant's acceptance of the principle of warfare, if ordained by God, removes him from the purview of the Universal Military Training and Service Act which requires objection to participation in war in any form if one is to merit exemption under the statute.

Accordingly, the Department recommended denial of the claim to exemption.

On March 19, 1953, the appeal board classified respondent I-A (p. 45). On March 26, he was ordered to report for induction (p. 48).[2] He reported but refused to submit to induction (R. 14).

REASONS FOR GRANTING THE WRIT

This case, like *United States* v. *Close,* 215 F. 2d 439 (C.A. 7), in which the government is also filing a petition for a writ of certiorari, holds that there is no basis in fact for denying the classification of conscientious objector to a member of Jehovah's Witnesses whose objection to participation in war is based on unwillingness to submit to governmental authority, and who does not object to fighting in wars approved by God. Like the *Close* decision, the ruling below is in conflict with the decision of the Seventh Circuit in *Sicurella* v. *United States,* No. 250, now before this Court. This petition is therefore filed to await the resolution of that conflict by this Court.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

NOVEMBER, 1954.

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[2] On September 29, 1952, respondent wrote to his local board stating that he had become a full time minister and that he could not accept a conscientious objector classification (p. 39). On March 26, 1953, the board replied that it was of the opinion that reopening of the case was not warranted (p. 47).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 14,163

September 24, 1954

JACKIE LEE HINKLE, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for the Northern District of California, Southern Division

Before STEPHENS, BONE and POPE, Circuit Judges.
POPE, Circuit Judge.

Hinkle was found guilty of a violation of the Universal Training and Service Act in that he knowingly refused to submit to induction. Upon this appeal from the judgment of conviction he asserts there was no basis in fact for not classifying him as a conscientious objector in accordance with his claim to exemption from military service upon that ground. By executing the form provided for that purpose and filing it with the local board, he claimed that he was opposed to both non-combatant and combatant military service, and that this opposition was based upon his religious belief as a member of Jehovah's Witnesses. The local board classified him in Class I-A, that is to say, as available for military service. He appealed his classifica-

tion; his file was forwarded to the appeal board, and the case was referred to the Department of Justice. Following a hearing before a hearing officer the Department made a report and recommendation to the appeal board. The Department, in making its recommendation as to the action of the appeal board, stated that it found, on the basis of the hearing officer's report, that Hinkle was reared in the Jehovah's Witnesses faith; that he based his opposition to war upon parental guidance and bible study under the auspices of his church. On the basis of reports from available sources it was stated that Hinkle was "honest, sincere and of excellent character". No derogatory information was developed by the FBI. Notwithstanding all this, the hearing officer and the Department of Justice found that Hinkle was not within "the category of a true conscientious objector" first, because he had stated in answer to questions that he believed that he might kill in self defense and in the protection of his home, and second, because he expressed a belief in the justification of theocratic warfare of the kind described in the Old Testament.[1]

The Department expressed the view that under these circumstances Hinkle was not within the exemption provided for by the Act "which requires

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[1] The record here fails to contain the Selective Service file which was introduced below and which includes the record of these recommendations. However, they are quoted at length by appellant and appellee does not question the accuracy of the quotations.

objection to participation in war in any form".[2] The appeal board, acting upon this recommendation classified Hinkle in IA.[3]

In the posture in which the case reaches us we are obliged to conclude that the action of the board of appeals was based and predicated upon the report of the Department of Justice here referred to. It was not based upon any personal appearance of Hinkle before the members of the appeal board, and we are obliged to conclude that the findings of the Department in substance became the findings of the board of appeals.

Viewed in that light the inference is that the appellant was found by the board to be sincere and in possession of beliefs religious in character which led him to oppose participation in war. The question then is whether Hinkle's expressed belief in his right to defend himself and his family through the use of force and his belief in the righteousness of theocratic warfare as described in the Bible, negative a conscientious objection to par-

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[2] "Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participate in war in any form." § 6(j) Title I of the Selective Service Act of 1948 as amended by § 1(q) Title I of the Universal Military Training and Service Act of June 19, 1951, 65 Stat. 76, 86; 50 U.S.C. App. § 456(j).

[3] As the appellant's final classification was that given him by the appeal board, the question here arises upon the validity of that board's action; the preceding classification is not in issue. United States v. Hartman, 2d cir., 209 F. 2d 336, 368, citing Reed v. United States, 205 F. 2d 216 and Tyrrell v. United States, 200 F. 2d 8, both decided in this court.

ticipation in war in any form. The appellant contends that the board's finding that it does is arbitrary, capricious and without basis in fact.

We note here that there is no basis for a finding of insincerity or of sham or of fakery. Admittedly all of the beliefs and views of the appellant were sincere and genuine. Can it then be said that a belief in a right of self-defense or a belief in the righteousness of the theocratic wars of the Old Testament place the appellant outside the exemption of the statute?

This question has been considered in Taffs v. United States, 8 cir., 208 F. 2d 329; United States v. Hartman, 2d cir., 209 F. 2d 366, and Annett v. United States, 10 cir., 205 F. 2d 689.

We do not think that Congress in using the words "participation in war in any form" contemplated the sort of self defense of an individual or his family or the theocratic warfare described in the Bible as coming within the meaning of that phrase. See in particular what was stated with respect to this in United States v. Hartman, supra, p. 370.

Accordingly, since we are in agreement with what was said on this subject in the cases last cited, we hold that the appellant's classification in I-A was without basis in fact and therefore his conviction cannot be sustained.

The judgment is reversed.

(Endorsed:) Opinion. Filed Sep. 24, 1954. Paul P. O'Brien, Clerk.

JUDGMENT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 14163

JACKIE LEE HINKLE, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, reversed.

(ENDORSED) Judgment

Filed and entered September 24, 1954.

PAUL P. O'BRIEN, Clerk.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. —

JACKIE LEE HINKLE

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including Nov. 23, 1954.

WM. O. DOUGLAS,
Associate Justice of the Supreme Court of the United States.

Dated this 21st day of October, 1954.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1954 931208 617